

Small Business Administration

§ 107.825

in business activity more than one year after your initial Financing you may:

- (1) Retain your investment; and
- (2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

STRUCTURING LICENSEE'S FINANCING OF ELIGIBLE SMALL BUSINESSES: TYPES OF FINANCING

§ 107.800 Financings in the form of Equity Securities.

(a) You may purchase the Equity Securities of a Small Business. You may not, inadvertently or otherwise:

- (1) Become a general partner in any unincorporated business; or
- (2) Become jointly or severally liable for any obligations of an unincorporated business.

(b) *Definition.* Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests. If the Financing agreement contains debt-type acceleration provisions or includes redemption provisions other than those permitted under § 107.850, the security will be considered a Debt Security for purposes of § 107.855.

§ 107.810 Financings in the form of Loans.

You may make Loans to Small Businesses. A Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

§ 107.815 Financings in the form of Debt Securities.

You may purchase Debt Securities from Small Businesses.

(a) *Definition.* Debt Securities are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options that you acquire.

(b) *Restriction on options obtained by Licensee's management and employees.* If you have outstanding Leverage or plan to obtain Leverage, your employees, officers, directors or general partners, or the general partners of the management company that is providing services to you or to your general partner, may obtain options in a Financed Small Business only if:

- (1) They participate in the Financing on a pari passu basis with you; or
- (2) SBA gives its prior written approval; or
- (3) The options received are compensation for service as a member of the board of directors of the Small Business, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 107.820 Financings in the form of guarantees.

At the request of a Small Business or where necessary to protect your existing investment, you may guarantee the monetary obligation of a Small Business to any non-Associate creditor.

(a) You may not issue a guaranty if:

- (1) You would become subject to State regulation as an insurance, guaranty or surety business;
- (2) The amount of the guaranty plus any direct Financings to the Small Business exceed the overline limitations of § 107.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline; or
- (3) The total financing cost to the Small Business exceeds the cost of money limits of § 107.855.

(b) *Pledge of Licensee's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 107.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase